

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Case No.: 0061011773

HEATHER MASON-WATSON,

Charging Party,

-v-

NANCY'S HALLMARK, INC.,
NANCY GROWNEY, and GARY
GROWNEY,

Respondents.

**FINAL AGENCY DECISION
AND ORDER AFFIRMING
HEARINGS BUREAU DECISION
IN PART AND MODIFYING IN PART**

Heather Mason-Watson (Mason-Watson) filed a complaint with the Department of Labor and Industry claiming unlawful discrimination and retaliation against her by Nancy's Hallmark. Mason-Watson claimed Nancy's Hallmark discriminated against her in the terms of her employment based on her sex due to her pregnancy and retaliated against her for participating in protected human rights activities. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined the actions by Nancy's Hallmark constituted discrimination and retaliation against Mason-Watson. Nancy's Hallmark filed an appeal with the Montana Human Rights Commission (Commission). Mason-Watson filed a cross appeal. The Commission considered the matter on November 14, 2007. Karl Knuchel appeared on behalf of Nancy's Hallmark. Tim Kelly appeared on behalf of Mason-Watson.

Regarding the appeal, Nancy's Hallmark argued that the hearing officer was incorrect in concluding an unemployment insurance determination regarding the working relationship between the parties did not act as a bar to Mason-Watson's human rights claims. Nancy's Hallmark also argued the hearing officer was incorrect in concluding there was discrimination because Mason-Watson's working hours were lowered after she miscarried and because Mason-Watson's employment was terminated after she miscarried. Nancy's Hallmark also argued the hearing officer's findings of fact were clearly erroneous.

Mason-Watson asserted the hearing officer's decision was correct.

Regarding the cross appeal, Mason-Watson argued that the hearing officer erred in omitting Nancy and Gary Growney as liable parties in the Bureau order because Nancy's Hallmark was not incorporated when the acts in question occurred. Mason-Watson asserted that a successor corporation such as Nancy's Hallmark, Inc. is only liable if the originally liable parties do not fulfill the judgment. During the hearing before the Commission, the parties stipulated to include Nancy and Gary Growney as respondents to this action who are individually liable for the judgment including damages.

After careful and due consideration, the Commission concludes the Bureau's decision in this matter is supported by competent substantial evidence and the conclusions of law are correct, with the exception of the omission of the individually liable parties. The Commission **affirms** the Bureau's decision in part and hereby adopts and incorporates the decision. However, the Commission hereby **modifies** the title of this case, and consequently the liable parties, to include Nancy and Gary Growney as individuals.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of November, 2007.

Ryan Rusche, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on November ____, 2007.

TIMOTHY KELLY
KELLY LAW OFFICE
PO BOX 65
EMIGRANT MT 59027

ROBERTA DREW
ATTORNEY AT LAW
PO BOX 1152
BILLINGS MT 59103

KARL KNUCHEL
ATTORNEY AT LAW
PO BOX 953
LIVINGSTON MT 59047

Montana Human Rights Bureau